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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,573	11/15/2006	Angus Lang	102792-495 (11161P1 US)	4431
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PARFOMAK, ANDREW N. 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			EXAMINER BOYER, CHARLES I	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			11/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,573

Applicant(s)

LANG ET AL.

Examiner

Charles I. Boyer

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-12,14,17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 17 and 19-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is responsive to applicants' amendment and response received April 6, 2009. Claims 1, 3-12, 14, 16, 17, 19, and 20 are currently pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is confusing because as the claim reads, it appears the particulate has both hydrophilic and hydrophobic moieties, when in fact, the claim should read either hydrophilic or hydrophobic moieties. The claim should be rewritten for clarity.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The rejection of claims 1, 3, 4, 9-12, 14, and 16 under 35 U.S.C. 102(e) as being anticipated by Zhu et al, US 6,797,685 is withdrawn in view of applicants' amendment and response.

3. The rejection of claims 1, 3, 4, 9-12, 14, and 16 under 35 U.S.C. 102(a) as being anticipated by Simon, US 6,464,966 is withdrawn in view of applicants' amendment and response.

4. The rejection of claims 1, 3, 4, 9-12, 14, and 16 under 35 U.S.C. 102(b) as being anticipated by St Lewis et al, US 6,268,322 is withdrawn in view of applicants' amendment and response.

5. The rejection of claims 1, 3, 4, 9-12, 14, and 16 under 35 U.S.C. 102(e) as being anticipated by Amalric et al, US 2003/0133957 is withdrawn in view of applicants' amendment and response.

6. Claims 1, 4, 6-12, and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Glenn et al, WO 02/069917.

Glenn et al teach a personal treatment composition in the form of a stable O/W/O emulsion comprising hydrophobic silica and fatty alcohol in the aqueous phase (page

50, example III). Suitable thickeners include hydrophobically modified silica and fumed silica (page 30). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

7. Claims 1, 4, 6, 8-12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al, US 5,985,177.

Yoshida et al teach an o/w/o multiple emulsion comprising a cationic clay, which satisfies the hydrophobic particulate moiety claimed (col. 24, examples 5-6 thru 5-10). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

8. Claims 1, 9-12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gers-Barlag et al, US 2002/0077372.

Gers-Barlag et al teach an o/w/o multiple emulsion with an inorganic micropigment (¶214). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

9. Claims 1, 3, 4, 6-12, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Barthel et al, US 2003/0175317.

Barthel et al teach a w/o/w multiple emulsion with a hydrophobic pyrogenic silica and an o/w/o multiple emulsion with a hydrophobic pyrogenic silica (page 9, examples 1 and 2). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 3, 4, 6-12, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalric et al, US 2003/0133957.

12. Amalric et al teach a topical composition in the form of a stable W/O/aqueous gel emulsion comprising surfactants in the aqueous phase (¶94). Note that these compositions may be used in detergent compositions (claim 12). The multiple emulsions may be stabilized with a hydrophobic silica (¶64). Accordingly, it would have been obvious to one of ordinary skill in the art to incorporate a hydrophobic silica stabilizer in the composition of ¶94 with a reasonable expectation of successfully forming an effective detergent composition.

Applicants have traversed this rejection on the grounds that the reference does not teach a hydrophobic silica. The examiner disagrees and refers applicants to ¶64.

13. The rejection of claims 1, 3, 4, 9-12, 14, 16, 17, 19, and 20 under 35 U.S.C. 103(a) as being unpatentable over Wegele et al, US 6,270,878 is withdrawn in view of applicants' amendment and response.

14. The rejection of claims 1, 3, 4, 9-12, 14, 16, 17, 19, and 20 under 35 U.S.C. 103(a) as being unpatentable over Sandvick, US 4,810,407 is withdrawn in view of applicants' amendment and response.

15. Claims 1, 3, 4, 9-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herb et al, US 6,022,547.

Herb et al teach water-oil-water multiple emulsions which may include fumed silica as a gelling agent (see abstract and col. 26, lines 40-47). Accordingly, it would have been obvious to one of ordinary skill in the art to formulate a w/o/w emulsion with a fumed silica gelling agent with a reasonable expectation of formulating an effective emulsion.

16. Claims 1, 3, 4, 6-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Afriat et al, US 2003/0149102.

Afriat et al teach compositions that may be in the form of water-oil-water or oil-water-oil multiple emulsions (¶38) which may include hydrophobic silica as a gelling agent (¶56). Accordingly, it would have been obvious to one of ordinary skill in the art to formulate a w/o/w or o/w/o emulsion with a hydrophobic silica gelling agent with a reasonable expectation of formulating an effective emulsion.

Allowable Subject Matter

17. Claims 17, and 19-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer
Primary Examiner
Art Unit 1796

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